IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2020 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VELSIBHAI K KOLI - Petitioner(s)
Versus
EXECUTIVE ENGINEER & 2 - Respondent(s)

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Appearance :
MR MRUGEN K PUROHIT for Petitioner(s) : 1,
MR MAULIK NANAVATI AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 16/11/2006

ORAL JUDGMENT

1.By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and/or order quashing and setting aside the order passed by the respondents dated

13.11.1987 by which, the petitioner was put under suspension.

2.It was the case on behalf of the petitioner that the petitioner was suspended pursuant to the criminal proceedings against the petitioner, however, subsequently, the petitioner has been acquitted by the competent Criminal Court, still the order of suspension is continued. On considering the affidavit-in-reply, it appears that as the order of acquittal has not been accepted by the State Government and the Criminal Appeal was filed against the order of acquittal, the petitioner was not reinstated.

3.By order dated 22.4.1997 the learned Single Judge of this Court while admitting the present Special Civil Application passed the following interim order :-

"Heard learned advocates for the parties.

Rule. In view of the criminal complaint lodged against the petitioner, the petitioner was suspended from service under order dated 13th November, 1987. A criminal case being Special Case No. 2 of

1987 lodged against the petitioner was tried by the learned Special Judge and Additional Sessions Judge, Ahmedabad (Rural). Under the judgment and order dated 4th November, 1988, the petitioner has been acquitted of the charge framed against him. Feeling aggrieved, the State has preferred appeal against the order of acquittal before this Court which is pending for hearing and final disposal. Pending said appeal, the petitioner's case for revocation of order of suspension has not been examined by the State. Learned Asstt. GP Ms. Gajjar has relied upon the Government Resolution dated 6th June, 1990 and has submitted that the prosecution lodged against the petitioner is still pending and, therefore, his case for revocation of the order of suspension cannot be reviewed. Learned advocate Ms. Vaibhavi Nanavaty appearing for Mr. Nagarkar for the petitioner has relied upon the judgment of this Court in the matter of State and another versus BC Dwivedi [1993(2) GLR 1314] and has submitted that in view of his acquittal by the trial Court and there being no disciplinary action initiated against the petitioner, the petitioner is entitled to reinstatement in service irrespective of an appeal pending against acquittal before this Court. In view of the above referred

judgment of this Court, by way of interim order, operation and implementation of the impugned order of suspension dated 13th November, 1987 [annexure "A" to the petition] is stayed. The respondents are directed to issue necessary order of posting of the petitioner within a period of four weeks from today."

4. Shri Purohit, learned advocate appearing for the petitioner has submitted that once the order of acquittal was passed, there was no reason for the respondents to continue the order of suspension. He has also submitted that as such by now the petitioner has already retired and the question is required to be considered with regard to the salary to be paid for the interregnum period during which, the petitioner was suspended and re-fixation of his pension.

5. In view of the above, keeping the aforesaid question open and without observing anything on merits, the present Special Civil Application is disposed of as the petitioner has already retired and also in view of the fact that during the pendency of the present Special Civil Application, the petitioner was reinstated.

6.This petition is accordingly disposed of with the above liberty. Rule is discharged. No costs.

[M.R.SHAH, J.]

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